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Judicial Nomination Statistics and Analysis: U.S. District and Circuit Courts, 1977-2018

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SUMMARY

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Judicial Nomination Statistics and Analysis: U.S. District and Circuit Courts, 1977-2018

In recent decades, the process for appointing judges to the U.S. circuit courts of appeals and the U.S. district courts has been of continuing Senate interest. The President and the Senate share responsibility for making these appointments. Pursuant to the Constitution's Appointments Clause, the President nominates persons to fill federal judgeships, with the appointment of each nominee also requiring Senate confirmation. Although not mentioned in the Constitution, an important role is also played midway in the appointment process by the Senate Judiciary Committee.

The statistics presented in this report reflect congressional interest in issues related to the confirmation process for lower federal court nominees. Statistics are provided for each stage of the nomination and confirmation process—from the frequency of judicial vacancies that require a presidential nomination for a judgeship to be filled to the frequency of roll call votes (rather than the use of unanimous consent or voice votes) to confirm judicial nominees. Statistics are also provided related to the length of the confirmation process itself. Additional statistics provided relate to the demographic characteristics of circuit and district court nominees confirmed by the Senate.

The period covered by the report, 1977 through 2018, includes every Administration from the Carter presidency to the first two years of the Trump presidency. This period also includes every Congress from the 95th (1977-1978) through the 115th (2017-2018).

Because the statistics presented for the Trump presidency are for the first two years of his Administration (while statistics for other presidencies reflect each President's entire Administration, whether four or eight years), the statistics presented for the Trump presidency may be different at the conclusion of his Administration.

This report will be next updated by CRS at the conclusion of the 116th Congress.

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Introduction

Under the Appointments Clause of the Constitution,[1] the President and the Senate share responsibility for making appointments to the Supreme Court, as well as to various lower courts of the federal judiciary. While the President nominates persons to fill federal judgeships, the appointment of each nominee also requires Senate confirmation.[2]

Historically, the vast majority of appointments to federal judgeships (other than to the Supreme Court) have typically not involved much public disagreement between the President and the Senate or between the parties within the Senate.[3] Debate in the Senate over particular lower court nominees, or over the lower court appointment process itself, was uncommon. Typically, such nominations were both reported out of the Judiciary Committee and confirmed by the Senate without any recorded opposition.

In recent decades, however, appointments to two kinds of lower federal courts—the U.S. circuit courts of appeals[4] and the U.S. district courts—have often been the focus of heightened Senate interest and debate, as has the process itself for appointing judges to these courts.[5]

Given congressional interest in the subject, this report provides statistics and analysis related to the nomination and confirmation of U.S. circuit and district court judges from 1977 (the beginning of the Carter presidency) through 2018 (the second year of the Trump presidency).[6]

The report's exclusive focus are the U.S. circuit courts of appeals and U.S. district courts. Excluded from the scope of the report are the U.S. Supreme Court; the U.S. Court of International Trade; the U.S. Court of Federal Claims; and territorial district courts (e.g., the District Court of Guam).

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[1] Article II, Section 2, clause 2 of the Constitution—often referred to as the Appointments Clause—provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.... "

[2] The Constitution also, in its Recess Appointments Clause (Article II, Section 2, clause 3), authorizes the President to make temporary appointments unilaterally during periods when the Senate is in recess. This was rarely done, however, during the presidencies discussed in this report. For example, over the past 25 years, "there have been only three recess appointments to fill Article III judgeships"—one such appointment to a circuit court judgeship by President William J. Clinton in 2000 and two to circuit court judgeships by President George W. Bush in 2004. CRS Report RS21308, *Recess Appointments: Frequently Asked Questions*, by Henry B. Hogue.

[3] In this vein, one scholar has noted that, relative to Supreme Court appointments, appointments to the lower federal courts "have not, for most of our history, engaged remotely similar public interest. Nor as a historical matter has the Senate played the same role in considering nominations to those courts." Stephen B. Burbank, "Politics, Privilege & Power; The Senate's Role in the Appointment of Federal Judges," *Judicature*, vol. 86 (July/August 2002), p. 25.

[4] The U.S. courts of appeals are routinely referred to as "circuit courts" throughout the text of this report.

[5] For discussion by scholars of the Senate's increased interest in the judicial appointment process in recent decades, see Nancy Scherer, *Scoring Points; Politicians, Activists, and the Lower Federal Court Appointment Process* (Stanford, CA: Stanford University Press, 2005), p. 271 (Hereinafter cited as Scherer, *Scoring Points.*) See also Sarah A. Binder and Forrest Maltzman, *Advice & Dissent: The Struggle to Shape the Federal Judiciary* (Washington: Brookings Institution Press, 2009), p. 198. For two relatively recent forums in which numerous Senators in detailed statements expressed their views concerning the lower court appointment process, see U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, *The Judicial Nomination and Confirmation Process*, Hearings, 107th Cong., 1st sess., June 26 and September 4, 2001, S.Hrg. 107-463 (Washington: GPO, 2002), 276 pp.; and U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Constitution, Civil Rights and Property Rights, *Judicial Nominations, Filibusters, and the Constitution: When a Majority Is Denied Its Right to Consent*, Hearing, 108th Cong., 1st sess., May 6, 2003, S.Hrg. 108-227 (Washington: GPO, 2003), p. 393.

[6] This period includes the 95th Congress through the 115th Congress.

Overview of the U.S. Courts of Appeals and U.S. District Courts

U.S. Circuit Courts

The U.S. courts of appeals, or circuit courts, take appeals from federal district court decisions and are also empowered to review the decisions of many administrative agencies. Cases presented to the courts of appeals are generally considered by judges sitting in three-member panels. Courts within the courts of appeals system are often called "circuit courts" (e.g., the First Circuit Court of Appeals is also referred to as the "First Circuit"), because the nation is divided into 12 geographic circuits, each with a U.S. court of appeals. One additional nationwide circuit, the U.S. Court of Appeals for the Federal Circuit, has specialized subject matter jurisdiction.

Altogether, 179 judgeships for these 13 courts of appeals are currently authorized by law (167 for the 12 regional U.S. courts of appeals and 12 for the U.S. Court of Appeals for the Federal Circuit).[7] The First Circuit (comprising Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has the fewest number of authorized appellate court judgeships, 6, while the Ninth Circuit (comprising Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) has the most, 29.

U.S. District Courts

U.S. district courts are the federal trial courts of general jurisdiction. There are 91 Article III district courts: 89 in the 50 states, plus 1 in the District of Columbia and 1 more in Puerto Rico. Each state has at least one U.S. district court, while some states (specifically California, New York, and Texas) have as many as four.

Altogether, 673 Article III U.S. district court judgeships are currently authorized by law.[8] Congress has authorized between 1 and 28 judgeships for each district court. The Eastern District of Oklahoma (Muskogee) has 1 authorized judgeship, the smallest number among Article III district courts, while the Southern District of New York (Manhattan) and the Central District of California (Los Angeles) each have 28 judgeships, the most among Article III district courts.

U.S. Circuit and District Court Vacancies

Opportunities for a President to make circuit and district court appointments arise when judgeships are vacant or are scheduled to become vacant. Various factors influence the number of such opportunities a President will have during his tenure in office, including the frequency with which judicial departures occur; whether any new judgeships are statutorily created by Congress (which consequently provide a President with the opportunity to nominate individuals to the new

[7] The Federal Circuit (which was created in its modern form in 1982 by the Federal Courts Improvement Act, 96 Stat. 25), has nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, veterans' benefits, and public safety officers' benefits claims.

[8] This total includes 10 temporary judgeships. See the U.S. Courts website at http://www.uscourts.gov/JudgesAndJudgeships/AuthorizedJudgeships.aspx.

judgeships);[9] the number of judicial nominations submitted by a President; and the speed by which the Senate considers such nominations.

Table 1 reports the percentage of U.S. circuit and district court judgeships that were vacant on January 1 immediately prior to the beginning of each new Congress and four-year presidential term from 1977 through 2017.[10]

Table 1. Percentage of U.S. Circuit and District Court Judgeships Vacant on January 1 Prior to Beginning of Each Congress and Four-Year Presidential Term

(1977-2017)

			Percentage of Judgeships Vacant on January 1	
Year	**Congress**	**President**	U.S. Circuit Courts	U.S. District Courts
1977	95th	Carter	5.2	4.8
1979	96th	Carter	28.8	24.7
1981	97th	Reagan	3.8	5.7
1983	98th	Reagan	3.5	4.5
1985	99th	Reagan	14.9	13.1
1987	100th	Reagan	7.7	7.2
1989	101st	Bush, G.H.W.	6.0	4.7
1991	102nd	Bush, G.H.W.	10.1	16.4
1993	103rd	Clinton	9.5	13.8
1995	104th	Clinton	8.9	8.1
1997	105th	Clinton	12.8	10.0
1999	106th	Clinton	9.5	6.3
2001	107th	Bush, G.W.	14.5	8.2
2003	108th	Bush, G.W.	14.0	5.0
2005	109th	Bush, G.W.	8.4	3.1
2007	110th	Bush, G.W.	8.9	5.9
2009	111th	Obama	7.3	5.9
2011	112th	Obama	8.9	11.7
2013	113th	Obama	8.9	8.8
2015	114th	Obama	3.9	4.9

[9] The large number of district court vacancies, for example, "inherited" by President Clinton contributed, in turn, to the relatively large number of district court confirmations during his presidency (see **Table 2**). The large number of district court vacancies inherited by President Clinton was, in part, the result of 74 new district court judgeships created by the Federal Judgeship Act of 1990 (P.L. 101-650). Other legislation substantially increasing the number of authorized circuit and district court judgeships was enacted in 1978 (Omnibus Judgeship Act, P.L. 95-486) and in 1984 (Bankruptcy Amendments and Federal Judgeship Act, P.L. 98-353).

[10] The percentage of U.S. circuit and district court judgeships that were vacant is calculated by dividing the number of circuit or district court vacancies that existed on a particular date by the number of authorized circuit or district court judgeships that were authorized on that same date. Note that, over the course of the seven presidencies included in this analysis, the number of authorized circuit court judgeships ranged from 97 to 179. The number of authorized district court judgeships varied from 394 to 673.

Year	Congress	President	Percentage of Judgeships Vacant on January 1	
			U.S. Circuit Courts	U.S. District Courts
2017	115th	Trump	9.5	12.8

Source: Congressional Research Service.

Note: This table shows the percentage of U.S. circuit and district court judgeships that were vacant on January 1 immediately prior to a new Congress convening that same month and prior to a President being inaugurated on January 20.

Overall, during this period, the median percentage of circuit court judgeships that were vacant immediately prior to the start of a new Congress was 8.9%.[11] The median percentage of district court judgeships that were vacant immediately prior to the start of a new Congress was 7.2%.

As shown by the table, the percentage of U.S. circuit judgeships that were vacant was highest at the beginning of the 96th Congress,[12] 28.8%, and lowest at the beginning of the 98th Congress, 3.5%. The percentage of U.S. district court judgeships that were vacant was also highest at the beginning of the 96th Congress, 24.7%, and lowest at the beginning of the 109th Congress, 3.1%.

The percentage of judgeships that are vacant at the beginning of a presidency is influenced, in part, by the extent to which the preceding President's nominees were approved by the Senate during the final year or two of his term. For example, most recently, at the beginning of the Trump presidency, the percentage of U.S. district court judgeships that were vacant was 12.8%.[13] This was due, in part, to the comparatively small number of district court nominations confirmed by the Senate during the final two years of the Obama presidency.[14]

Number and Percentage of Nominees Confirmed

Various factors influence the number and percentage of judicial nominees confirmed during any given presidency or Congress. These factors include, but are not limited to, the frequency with which judges depart the bench; the speed with which a presidential Administration vets and selects nominees for vacant judgeships; whether a President is of the same political party as the

[11] The median is the middle value for a particular set or group of numbers. So, for example, the median percentage of circuit court judgeships that were vacant on January 1 prior to Congresses from 1977 through 2018 is referring to the middle value when considering the entire group of percentages of vacant circuit court judgeships on January 1 during this period. Although the average (also referred to as the mean) is another common measure of central tendency, this report refers most often to the median. The median is less affected by outliers or extreme cases. Consequently, for the purposes of this report, the median may be a better measure of central tendency.

[12] In 1978 Congress passed legislation that increased the number of U.S. circuit court judgeships from 97 to 132 and the number of district court judgeships from 394 to 511 (P.L. 95-486, October 20, 1978). This increased the number of vacancies at the beginning of the 96th Congress, as shown by **Table 1**.

[13] At the beginning of the 116th Congress (which is not included in the time period of the report), the percentage of circuit court judgeships that were vacant was 6.7%, and the percentage of district court judgeships that were vacant was 17.7%.

[14] Specifically, 18 district court nominations were approved during the 114th Congress (while 43 district court nominations were returned to President Obama at the end of the Congress, including 20 nominations that had been pending on the Senate *Executive Calendar*). See CRS Insight IN10570, *U.S. District Court Vacancies at the Beginning and End of the Obama Presidency: Overview and Comparative Analysis*, by Barry J. McMillion (available to congressional staff upon request). Similarly, at the beginning of the Clinton presidency, the percentage of district court judgeships that were vacant was 13.8%. This was due, in part, to the relatively large number of district court nominees whose nominations were returned at the end of the G.H.W. Bush presidency. During the 102nd Congress (i.e., the final two years of the G.H.W. Bush presidency), the Senate approved 100 district court nominations and returned 42 at the end of the Congress.

majority party in the Senate; whether a congressional session coincides with a presidential election year; and the point in a congressional session when nominations arrive in the Senate.

By Presidency

As shown by **Table 2**, the number of U.S. circuit court nominees confirmed during a completed presidency ranged from a high of 83 during the Reagan presidency to a low of 42 during the single four-year term of George H. W. Bush.[15] Of two-term Presidents, the high ranged from a high of 83 (Reagan) to a low of 55 during the Obama presidency.

In terms of the percentage of circuit court nominees confirmed during a completed presidency, which takes into account the number of circuit court nominations submitted to the Senate, the greatest percentage of nominees were confirmed during the Carter presidency (93.3%), and the smallest percentage were confirmed during the George W. Bush presidency (71.8%). Of two-term Presidents, the high ranged from 88.3% during the Reagan presidency to a low of 71.8% (George W. Bush).

Table 2. U.S. Circuit and District Court Nominees of Seven Most Recent Presidents: Number Nominated, Number Confirmed, Percentage Confirmed

(1977 through 2018)

President (Congresses, Years)		U.S. Circuit Court Nominees	U.S. District Court Nominees	U.S. Circuit and District Court Nominees (Combined)
Carter (95th-96th, 1977-1980)	N	60	218	278
	C	56	202	258
	%	93.3%	92.7%	92.8%
Reagan (97th-100th, 1981-1988)	N	94	306	400
	C	83	290	373
	%	88.3%	94.8%	93.2%
Bush, G.H.W. (101st-102nd, 1989-1992)	N	53	192	245
	C	42	148	190
	%	79.2%	77.1%	77.6%
Clinton (103rd-106th, 1993-2000)	N	90	350	440
	C	65	305	370
	%	72.2%	87.1%	84.1%
Bush, G.W. (107th-110th, 2001-2008)	N	85	286	371
	C	61	261	322
	%	71.8%	91.3%	86.8%
Obama (111th-114th, 2009-2016)	N	68	322	390
	C	55	268	323

[15] There were 30 circuit court nominees confirmed during President Trump's first two years in office. This is the greatest number of circuit court nominees confirmed by the Senate during the first two years of any presidency listed in **Table 2**. The next greatest number of circuit court nominees confirmed during the first two years of any presidency listed in the table was 22 during the G.H.W. Bush presidency (and the fewest number of circuit court nominees confirmed during the first two years of a presidency was 12 during the Carter presidency).

President (Congresses, Years)		U.S. Circuit Court Nominees	U.S. District Court Nominees	U.S. Circuit and District Court Nominees (Combined)
	%	80.9%	83.2%	82.8%
Trump[a] (115th, 2017-2018)	*N*	*43*	*112*	*155*
	C	*30*	*53*	*83*
	%	*69.8%*	*47.3%*	*53.5%*

Source: Congressional Research Service.

Notes: This table shows, for each of the past seven Presidents, the number of individuals nominated to U.S. circuit and district court judgeships during his presidency (N); the number confirmed during his presidency (C); and the percentage confirmed (%).

a. The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Table 2** may not be directly comparable to the statistics provided for the other Presidents listed in the table.

The number of U.S. district court nominees confirmed during a completed presidency ranged from a high of 305 during the Clinton presidency to a low of 148 during the single four-year term of George H. W. Bush.[16] Of two-term Presidents, the high ranged from a high of 305 (Clinton) to a low of 261 during the George W. Bush presidency.

In terms of the percentage of district court nominees confirmed during a completed presidency, which takes into account the number of district court nominations submitted to the Senate, the greatest percentage of nominees were confirmed during the Reagan presidency (94.8%), and the smallest percentage were confirmed during the George H. W. Bush presidency (77.1%). Of two-term Presidents, the high ranged from 94.8% (Reagan) to a low of 83.2% during the Obama presidency.

By Congress

The median number of U.S. circuit court nominees confirmed during a Congress, from the 95th through the 115th, was 17 (while the median number of circuit court nominations submitted to the Senate was 26). And as shown by **Table 3**, the number of U.S. circuit court nominees confirmed during this same period ranged from a low of 2 (during the 114th Congress, 2015-2016) to a high of 44 (during the 96th Congress, 1979-1980).

The median percentage of circuit court nominees confirmed during a Congress, from the 95th through the 115th, was 65.4%. The smallest percentage of circuit court nominees, 22.2%, were confirmed during the 114th Congress (2015-2016). All (100%) of the circuit court nominations submitted to the Senate during the 95th and 99th Congresses (1977-1978 and 1985-1986, respectively) were confirmed by the Senate.

The median number of U.S. district court nominees confirmed during a Congress, from the 95th through the 115th, was 66 (while the median number of district court nominations submitted to the Senate was 85). The number of nominees confirmed ranged from a low of 18 (during the 114th Congress, 2015-2016) to a high of 154 (during the 96th Congress, 1979-1980).

[16] There were 53 district court nominees confirmed during President Trump's first two years in office. This ranks fourth (of the seven presidencies listed in **Table 2**) in terms of the number of district court nominees confirmed by the Senate during the first two years of a presidency. The greatest number of district court nominees confirmed during the first two years of any presidency listed in the table was 107 during the Clinton presidency (and the fewest number of district court nominees confirmed during the first two years of a presidency was 44 during the Obama presidency).

The median percentage of district court nominees confirmed during a Congress, from the 95th through the 115th, was 84.0%. The smallest percentage confirmed during this period was 29.5% (during the 114th Congress, 2015-2016) and the greatest percentage confirmed was 98.6% (during the 97th Congress, 1981-1982).

Table 3. Nominees to U.S. Circuit and District Court Judgeships During Each Congress: Number Nominated, Number Confirmed, Percentage Confirmed

(95th Congress through 115th Congress)

Congress (Years)	U.S. Circuit Court Nominees			U.S. District Court Nominees			U.S. Circuit & District Court Nominees (Combined)		
	# of Nominees	Nominees Confirmed		# of Nominees	Nominees Confirmed		# of Nominees	Nominees Confirmed	
		#	%		#	%		#	%
95th (1977-78)	12	12	100	50	48	96.0	62	60	96.8
96th (1979-80)	48	44	91.7	168	154	91.7	216	198	91.7
97th (1981-82)	20	19	95.0	69	68	98.6	89	87	97.8
98th (1983-84)	19	14	73.7	75	61	81.3	94	75	79.8
99th (1985-86)	33	33	100	100	95	95.0	133	128	96.2
100th (1987-88)	26	17	65.4	78	66	84.6	104	83	79.8
101st (1989-90)	23	22	95.7	50	48	96.0	73	70	95.9
102nd (1991-92)	31	20	64.5	144	100	69.4	175	120	68.6
103rd (1993-94)	22	19	86.4	118	107	90.7	140	126	90.0
104th (1995-96)	20	11	55.0	85	62	72.9	105	73	69.5
105th (1997-98)	30	20	66.7	94	79	84.0	124	99	79.8
106th (1999-00)	34	15	44.1	83	57	68.7	117	72	61.5
107th (2001-02)	32	17	53.1	98	83	84.7	130	100	76.9
108th (2003-04)	34	18	52.9	94	85	90.4	128	103	80.5
109th (2005-06)	28	16	57.1	65	35	53.8	93	51	54.8
110th (2007-08)	23	10	43.5	79	58	73.4	102	68	66.7
111th (2009-10)	25	16	64.0	78	44	56.4	103	60	58.3
112th (2011-12)	25	14	56.0	127	97	76.4	152	111	73.0
113th (2013-14)	26	23	88.5	123	109	88.6	149	132	88.6
114th (2015-16)	9	2	22.2	61	18	29.5	70	20	28.6
115th (2017-18)	43	30	69.8	112	53	47.3	155	83	53.5

Source: Congressional Research Service.

Notes: This table shows, for the 95th Congress through the 115th Congress, the number of individuals nominated to U.S. circuit and district court judgeships during each Congress; the number of nominees confirmed during each Congress (#); and the percentage of nominees confirmed during the same Congress (%).

Influence of Unified and Divided Party Control

In general, both a greater number and percentage of circuit and district court nominees were confirmed during Congresses in which the party of the President was the same as the majority

party in the Senate.[17] During Congresses in which there was unified party control (i.e., the party of the President and the majority party in the Senate were the same),[18] the median number of circuit court nominees confirmed was approximately 18, and the median percentage of nominees confirmed was 80.0%. In contrast, during Congresses in which there was divided party control (i.e., the party of the President was different than the majority party in the Senate),[19] the median number of circuit court nominees confirmed was 16, and the median percentage of nominees confirmed was 59.7%.

During Congresses in which there was unified party control, the median number of district court nominees confirmed was approximately 76, and the median percentage of nominees confirmed was 89.5%. In contrast, during Congresses in which there was divided party control, the median number of district court nominees confirmed was 60, and the median percentage of nominees confirmed was 73.1%.

Multiple Nominations of the Same Person Prior to Final Action by the Senate

Over the last several presidencies, it has become increasingly common for a President to nominate an individual two or more times to a U.S. circuit or district court judgeship prior to final action on the nomination by the Senate (irrespective of whether the Senate ultimately approved the nomination).[20] Consequently, the percentage of nominees confirmed during a presidency who were nominated two or more times prior to being approved by the Senate has also increased in recent years.

U.S. Circuit Court Nominees

As shown by **Table 4**, the total number of circuit court nominees who were nominated two or more times prior to final action, whether confirmed or not, ranged from a low of 1 (during the Carter and George H. W. Bush presidencies) to a high of 39 (during the George W. Bush presidency).

The number of circuit court nominees who were nominated more than once and ultimately *confirmed* by the Senate ranged from a low of 0 (during the George H. W. Bush presidency) to a high of 28 (during the George W. Bush presidency). And the number of nominees who were nominated more than once but *not confirmed* by the Senate ranged from a low of 0 (during the Carter presidency) to a high of 11 (during the George W. Bush presidency).

[17] This part of the analysis omits the 107th Congress (during which the majority party in the Senate changed prior to the end of the Congress).

[18] These Congresses include the 95th, 96th, 97th, 98th, 99th, 103rd, 108th, 109th, 111th, 112th, 113th, and 115th.

[19] These Congresses include the 100th, 101st, 102nd, 104th, 105th, 106th, 110th, and 114th.

[20] Senate rules provide that "nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President…" In practice, such nominations, whether for the executive or judicial branch, have sometimes been returned to the President at the end of the first session and are always returned to the President at the end of the Congress. Nominations also may be returned automatically to the President at the beginning of a recess of more than 30 days, but the Senate rule providing for this return has often been waived. See CRS Report R44083, *Appointment and Confirmation of Executive Branch Leadership: An Overview*, by Henry B. Hogue and Maeve P. Carey.

Overall, of the six presidencies listed in **Table 4**, President George W. Bush had the greatest percentage of confirmed circuit court nominees who were nominated more than once prior to being confirmed by the Senate (45.9%).

Most recently, during the Obama presidency, the percentage of confirmed circuit court nominees who were nominated more than once prior to being approved by the Senate declined to 36.4% (representing the second-highest percentage of circuit court nominees nominated more than once prior to Senate approval).

Table 4. Number of U.S. Circuit Court Nominees Who Were Nominated Two or More Times Prior to Final Action and Percentage of All Confirmed U.S. Circuit Court Nominees Nominated Two or More Times Prior to Being Confirmed

President	Number of Nominees Nominated Two or More Times Prior To Final Action			Percentage of President's *Confirmed* Nominees Who Were Nominated Two or More Times Prior to Being Confirmed
	Confirmed	Not Confirmed	Total	
Carter	1	0	1	1.8%
Reagan	6	1	7	7.2%
Bush, G.H.W.	0	1	1	0.0%
Clinton	12	10	22	18.5%
Bush, G.W.	28	11	39	45.9%
Obama	20	5	25	36.4%

Source: Congressional Research Service.

Notes: This table shows the number of U.S. circuit court nominees who were nominated two or more times prior to final action on their nominations (and whether confirmed or not by the Senate). The table also provides the overall percentage of circuit court nominees who were confirmed during a presidency and nominated two or more times prior to being confirmed by the Senate. The Trump presidency is not listed in **Table 4** because nine individuals who were nominated to circuit court judgeships during the 115th Congress were renominated during the 116th Congress and have yet to receive final action by the Senate.

U.S. District Court Nominees

As shown by **Table 5**, the total number of district court nominees who were nominated two or more times prior to final action ranged from a low of 3 (during the George H. W. Bush presidency) to a high of 111 (during the Obama presidency).

The number of district court nominees who were nominated more than once and ultimately *confirmed* by the Senate ranged from a low of 2 (during the George H. W. Bush presidency) to a high of 104 (during the Obama presidency). And the number of nominees who were nominated more than once but *not confirmed* by the Senate ranged from a low of 1 (during the Carter and George H. W. Bush presidencies) to a high of 9 (during the Clinton presidency).

Overall, of the six presidencies listed in **Table 5**, President Obama had the greatest percentage of confirmed district court nominees who were nominated more than once prior to being confirmed by the Senate (38.8%). This was an increase from the George W. Bush presidency, when 23.8% of district court nominees were nominated more than once prior to being confirmed (which represents the second-highest percentage of district court nominees nominated more than once prior to Senate approval).

Table 5. Number of U.S. District Court Nominees Who Were Nominated Two or More Times Prior to Final Action and Percentage of All Confirmed U.S. District Court Nominees Nominated Two or More Times Prior to Being Confirmed

President	Number of Nominees Nominated Two or More Times Prior to Final Action			Percentage of All *Confirmed* Nominees Who Were Nominated Two or More Times Prior to Being Confirmed
	Confirmed	Not Confirmed	Total	
Carter	4	1	5	2.0%
Reagan	24	2	26	8.3%
Bush, G.H.W.	2	1	3	1.4%
Clinton	21	9	30	6.9%
Bush, G.W.	62	6	68	23.8%
Obama	104	7	111	38.8%

Source: Congressional Research Service.

Notes: This table shows the number of U.S. district court nominees who were nominated two or more times prior to final action on their nominations (and whether confirmed or not by the Senate). The table also provides the overall percentage of district court nominees who were confirmed during a presidency and nominated two or more times prior to being confirmed by the Senate. The Trump presidency is not listed in **Table 5** because individuals who were nominated to district court judgeships during the 115th Congress were renominated during the 116th Congress and have yet to receive final action by the Senate.

Nominees Whose Nominations Were Returned at the End of a Congress

Table 6 provides data related to the number of U.S. circuit and district court nominees whose nominations were returned by the Senate to the President at the end of each Congress, from the 95th through the 115th.[21] The table also indicates how many of these nominees had been given a hearing (or not) by the Judiciary Committee as well as how many had their nominations reported by the committee and pending on the *Executive Calendar* prior to being returned to the President.

For a Congress that did not coincide with the last two years of a presidency, it was not uncommon for a nominee whose nomination was returned at the end of it to be resubmitted during a subsequent Congress and eventually be approved by the Senate.[22] For a Congress, however, that did coincide with the last two years of a presidency, a nominee whose nomination was returned at the end of it was not confirmed by the Senate.

U.S. Circuit Court Nominees

The median number of U.S. circuit court nominees whose nominations were returned to a President at the end of a Congress during this period was 8, while the median number of district court nominees whose nominations were returned at the end of a Congress was 13. For the 13

[21] These data do not include nominations that were returned to a President at times other than at the end of a Congress or that were withdrawn by a President himself. It also excludes nominations that were rejected by the Senate in up-or-down roll call votes.

[22] For example, each of the 13 district court nominations returned at the end of the 98th Congress (1983-1984) was later approved by the Senate during a subsequent Congress. Similarly, 22 of 24 district court nominations returned at the end of the 112th Congress (2011-2012) were later approved during a subsequent Congress.

most recent Congresses (corresponding to Congresses during the Clinton, George W. Bush, Obama, and Trump presidencies), the median number of circuit court nominees whose nominations were returned to a President at the end of a Congress was 9, while the median number of district court nominations returned was 20.

No circuit court nominees had nominations returned at the end of the 95th Congress (during the Carter presidency) or during the 99th Congress (during the Reagan presidency).

The 106th Congress, during the Clinton presidency, had the greatest number of circuit court nominees whose nominations were returned at the end of a Congress (17)—followed by the 107th and 108th Congresses, both during the George W. Bush presidency, when 15 circuit court nominations were returned at the end of each Congress.

The greatest percentage of circuit court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 114th Congress during the Obama presidency (seven of nine nominations, or 77.8%, were returned).

Table 6. U.S. Circuit and District Court Nominees: Number Whose Nominations Were Returned at End of Each Congress and the Percentage of All Nominees Whose Nominations Were Returned at End of Each Congress

(95th Congress through 115th Congress)

	U.S. Circuit Court Nominees					U.S. District Court Nominees				
Congress (Years)	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees
95th (1977-78)	0	0	0	0	0.0%	1	0	0	1	2.0%
96th (1979-80)	0	3	1	4	8.3%	0	6	6	12	7.1%
97th (1981-82)	0	0	1	1	5.0%	0	0	1	1	1.4%
98th (1983-84)	1	1	1	3	15.8%	5	3	5	13	17.3%
99th (1985-86)	0	0	0	0	0.0%	0	1	2	3	3.0%
100th (1987-88)	2	0	5	7	26.9%	1	5	3	9	11.5%
101st (1989-90)	0	0	1	1	4.3%	0	0	2	2	4.0%
102nd (1991-92)	0	1	9	10	32.3%	0	0	42	42	29.2%
103rd (1993-94)	0	1	2	3	13.6%	0	2	9	11	9.3%
104th (1995-96)	4	1	3	8	40.0%	3	5	12	20	23.5%
105th (1997-98)	2	1	6	9	30.0%	2	3	6	11	11.7%
106th (1999-00)	0	2	15	17	50.0%	0	2	22	24	28.9%
107th (2001-02)	0	3	12	15	46.9%	0	0	15	15	15.3%
108th (2003-04)	11	3	1	15	44.1%	0	2	6	8	8.5%
109th (2005-06)	0	1	9	10	35.7%	13	1	14	28	43.1%
110th (2007-08)	0	0	10	10	43.5%	0	3	17	20	25.3%
111th (2009-10)	4	0	5	9	36.0%	16	1	17	34	43.6%
112th (2011-12)	4	0	3	7	28.0%	6	4	14	24	18.9%
113th (2013-14)	0	0	2	2	7.7%	0	1	10	11	8.9%
114th (2015-16)	2	1	4	7	77.8%	18	10	15	43	70.5%

Congress (Years)	U.S. Circuit Court Nominees					U.S. District Court Nominees				
	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees	Hearing & Reported	Hearing & Not Reported	No Hearing	Total	% of All Nominees
115th (2017-18)	0	6	6	12	27.9%	31	17	8	56	50.0%

Source: Congressional Research Service.

Notes: This table shows, for the 95th Congress through the 115th Congress, the number of nominees whose nominations were returned at the end of a Congress (as well as how many of the nominees had received a Judiciary Committee hearing, or not, and how many had their nominations reported by the committee).

U.S. District Court Nominees

A single district court nominee had a nomination returned at the end of each of the 95th and 97th Congresses during the Carter and Reagan presidencies, respectively.

The 115th Congress had the greatest number of district court nominees whose nominations were returned at the end of a Congress (56).

The smallest percentage of district court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 97th Congress, 1981-1982, during the Reagan presidency (1 of 69, or 1.4%, were returned).

The greatest percentage of district court nominees who had nominations returned, as a percentage of all nominees who were nominated during a Congress, occurred at the end of the 114th Congress, 2015-2016, during the Obama presidency (43 of 61 nominations, or 70.5%, were returned).

Table 6 does not indicate when, during a Congress, a President submitted nominations to the Senate. If nominations are submitted for the first time relatively late in a Congress, it may not give the Senate adequate time to act on them prior to adjournment.

Time from Nomination to Confirmation

This section provides, for nominees confirmed by the Senate from 1977 through 2018, the median number of days from nomination to confirmation by presidency and by Congress.[23] In general, the length of time from when a President nominates an individual to a vacant circuit or district court judgeship to when the Senate approves that nomination has steadily increased, for most nominees, since 1977.[24]

In addition to the general increase in the length of time of the confirmation process itself, an individual nominee might experience a relatively longer period of time from nomination to confirmation due to opposition to the nomination by the nonpresidential party in the Senate;

[23] Excluded from the analysis are unsuccessful nominations that were not approved by the Senate. These nominations are excluded because most of a President's nominees are approved by the Senate and, consequently, provide a better indication as to whether and how the length of time from nomination to confirmation has changed over time for a typical circuit or district court nominee.

[24] If a nominee was nominated more than once by a President, prior to the nominee's eventual confirmation by the Senate, the first date on which he or she was nominated was used to calculate the days elapsed from nomination to confirmation.

committee and floor scheduling decisions unrelated to partisan opposition to the nomination; and delays in receiving requested background information from the nominee.[25]

By Presidency

As shown by **Table 7**, the median number of days from nomination to confirmation for U.S. circuit court nominees for completed presidencies ranged from a low of 45.0 days during the Reagan presidency to a high of 229.0 days during the Obama presidency.

Following the Reagan presidency, the median number of days from nomination to confirmation increased during each successive completed presidency (increasing to 83.0 days during the George H. W. Bush presidency, 139.0 days during the Clinton presidency, 216.0 days during the George W. Bush presidency, and 229.0 days during the Obama presidency).

The first two years of the Trump presidency, with a median of 140.5 days, represent a decline in this trend.

If the average, rather than the median, is used to measure the length of time a President's circuit court nominees waited from nomination to confirmation,[26] the average number of days from nomination to confirmation for completed presidencies ranged from a low of 68.7 days during the Reagan presidency to a high of 350.6 days during the George W. Bush presidency.[27]

Table 7. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Presidency

(1977-2018)

	Circuit Court Nominees		District Court Nominees	
President	Number Confirmed	Median # of Days from Nomination to Confirmation	Number Confirmed	Median # of Days from Nomination to Confirmation
Carter	56	62.5	202	56.5
Reagan	83	45.0	290	41.0
G.H.W. Bush	42	83.0	148	93.0
Clinton	65	139.0	305	99.0
G.W. Bush	61	216.0	261	141.0

[25] There may be several consequences to the relatively longer waiting times from nomination to confirmation experienced by many judicial nominees, including an increase in the vacancy rates of circuit and district court judgeships; detrimental effects on judicial administration, such as caseload management; fewer highly qualified nominees who are willing to undergo a more lengthy, and potentially more combative, confirmation process; and an excessive emphasis on the ideological or partisan predisposition of nominees. For further discussion of these factors, see CRS Report R43316, *Length of Time from Nomination to Confirmation for U.S. Circuit and District Court Nominees: Overview and Policy Options to Shorten the Process*, by Barry J. McMillion.

[26] The average number of days from nomination to confirmation increases, relative to the median number of days from nomination to confirmation, because during each presidency there are nominees whose wait times from nomination to confirmation were particularly long relative to a President's other nominees who were confirmed by the Senate. The nominees with relatively long wait times are outliers in the sense of having the effect of "skewing" or increasing the average wait time from nomination to confirmation. The median number of days from nomination to confirmation, however, is less affected by these extreme cases and represents a measure of time from nomination to confirmation that was more typical for a President's nominees.

[27] The average number of days from nomination to confirmation for U.S. circuit court nominees during the Clinton presidency was 238.2 days, while for the Obama presidency it was 260.2 days.

	Circuit Court Nominees		District Court Nominees	
Obama	55	229.0	268	215.0
Trump[a]	*30*	*140.5*	*53*	*235.0*

Source: Congressional Research Service.

Note: This table shows the median number of days from nomination to confirmation for U.S. circuit and district court nominees whose nominations were approved by the Senate from 1977 through 2018.

a. The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Table 7** may not be directly comparable to the statistics provided for the other Presidents listed in the table.

For completed presidencies, the median number of days from nomination to confirmation for U.S. district court nominees ranged from a low of 41.0 days during the Reagan presidency to a high of 215.0 days during the Obama presidency.

Following the Reagan presidency, the median number of days from nomination to confirmation increased during each successive completed presidency (increasing to 93.0 days during the George H. W. Bush presidency, 99.0 days during the Clinton presidency, 141.0 days during the George W. Bush presidency, and to 215.0 days during the Obama presidency).

The first two years of the Trump presidency, with a median of 235.0 days, represented a continuation of this upward trend.[28]

U.S. Circuit Court Nominees

Figure 1 shows, for each U.S. circuit court nominee who was confirmed from 1977 through 2018, the number of days from when that individual was first nominated to when he or she was confirmed by the Senate. The particular circuit court nominee who waited the longest period of time from nomination to confirmation is also labeled for each presidency.[29]

365 or More Days from Nomination to Confirmation

As shown by the figure, there was a notable increase after the George H. W. Bush presidency in the number of nominees who waited one year or more from nomination to confirmation. During the Carter, Reagan, and George H. W. Bush presidencies, no circuit court nominees waited 365 days or more to be confirmed.

During the Clinton presidency, there were 12 circuit court nominees who waited one year or more to be confirmed. The number of circuit court nominees who waited at least 365 days to be confirmed increased further, to a high of 18, during the George W. Bush presidency. During the Obama presidency, there were 8 circuit court nominees who waited at least one year to be confirmed.

[28] For completed presidencies, the *average* wait time from nomination to confirmation for U.S. district court nominees was 67.5 days (Reagan); 70.5 days (Carter); 103.0 days (G.H.W. Bush); 135.6 days (Clinton); 178.0 days (G.W. Bush); and 224.9 days (Obama). The average wait time from nomination to confirmation for district court nominees during the first two years of the Trump presidency was 255.5 days.

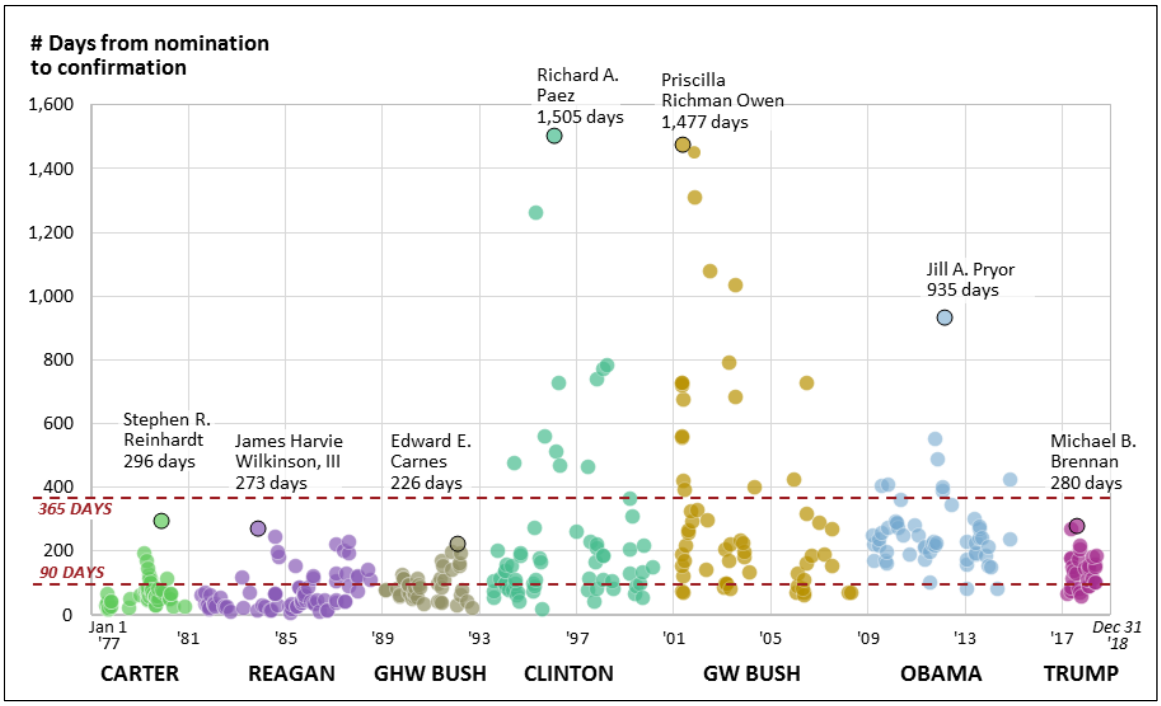
[29] As shown by the figure, the circuit court nominee who experienced the longest period of time from nomination to confirmation (across all seven presidencies) was Richard A. Paez, who waited 1,505 days, or approximately four years, to be confirmed after being nominated by President Clinton. The circuit court nominee with the second-longest period of time from nomination to confirmation was Priscilla R. Owen, who waited 1,477 days (also approximately four years) to be confirmed after being nominated by President G.W. Bush.

During the first two years of the Trump presidency, none of the 30 circuit court nominees whose nominations were confirmed by the Senate waited at least 365 days to be confirmed.

Overall, 18% of President Clinton's circuit court nominees waited at least 365 days to be confirmed, 30% of President George W. Bush's nominees waited at least this long (the highest among the six completed presidencies), and 15% of President Obama's nominees waited at least 365 days.

Figure 1. U.S. Circuit Court Nominees: Number of Days from Nomination to Confirmation

(1977-2018)



Source: Congressional Research Service.

Notes: This figure shows the number of days from nomination to confirmation for U.S. circuit court nominees whose nominations were approved by the Senate from 1977 through 2018. For each presidency, the circuit court nominee who waited the longest from nomination to confirmation is labeled in the figure.

90 or Fewer Days from Nomination to Confirmation

During the Carter and Reagan presidencies, 47 and 63 circuit court nominees, respectively, waited 90 or fewer days from nomination to confirmation. During the George H. W. Bush presidency, 24 circuit court nominees waited 90 or fewer days to confirmation. President Clinton had 18 circuit court nominees confirmed within 90 days (i.e., within approximately three months) of being nominated, while President George W. Bush had 11 such nominees. President Obama had 2 circuit court nominees confirmed within three months of being nominated (the lowest number among the completed presidencies).

During the first two years of the Trump presidency, eight circuit court nominees were confirmed within 90 or fewer days of being nominated.

Overall, 84% of President Carter's circuit court nominees were confirmed within 90 days of being nominated. During the Reagan presidency, 76% of circuit court nominees were confirmed

within 90 days of nomination, while during the George H. W. Bush presidency 57% of circuit court nominees were confirmed within this time frame.

During the Clinton presidency, the percentage of circuit court nominees approved by the Senate within 90 days fell below half of all circuit court nominees confirmed (to 26%). The percentage of nominees confirmed in 90 or fewer days decreased further during both the George W. Bush presidency (to 16%) and the Obama presidency (to 4%, the lowest percentage among the six completed presidencies).

During the first two years of the Trump presidency, 27% of circuit court nominees were confirmed within 90 days of being nominated.

U.S. District Court Nominees

Figure 2 shows, for each U.S. district court nominee who was confirmed from 1977 through 2018, the number of days from when that individual was first nominated to when he or she was confirmed by the Senate. The particular district court nominee who waited the longest period of time from nomination to confirmation is also labeled for each presidency.[30]

365 or More Days from Nomination to Confirmation

As shown by the figure, there was a notable increase after the George H. W. Bush presidency in the number of nominees who waited one year or more from nomination to confirmation. During the Carter and Reagan presidencies, a combined total of five district court nominees waited 365 days or more to be confirmed.[31] No district court nominees during the George H. W. Bush presidency waited 365 or more days from nomination to confirmation.

During the Clinton presidency, there were 14 district court nominees who waited one year or more to be confirmed. The number of district court nominees who waited at least 365 days to be confirmed increased further, to a high of 17, during the George W. Bush presidency. During the Obama presidency, there were 16 district court nominees who waited at least 365 days to be confirmed (which was the second highest among the completed presidencies).

During the first two years of the Trump presidency, there were six district court nominees who waited at least 365 days from nomination to confirmation.

Overall, 5% of President Clinton's district court nominees waited at least 365 days to be confirmed, 7% of President George W. Bush's nominees waited at least this long, and 6% of President Obama's nominees waited at least 365 days.

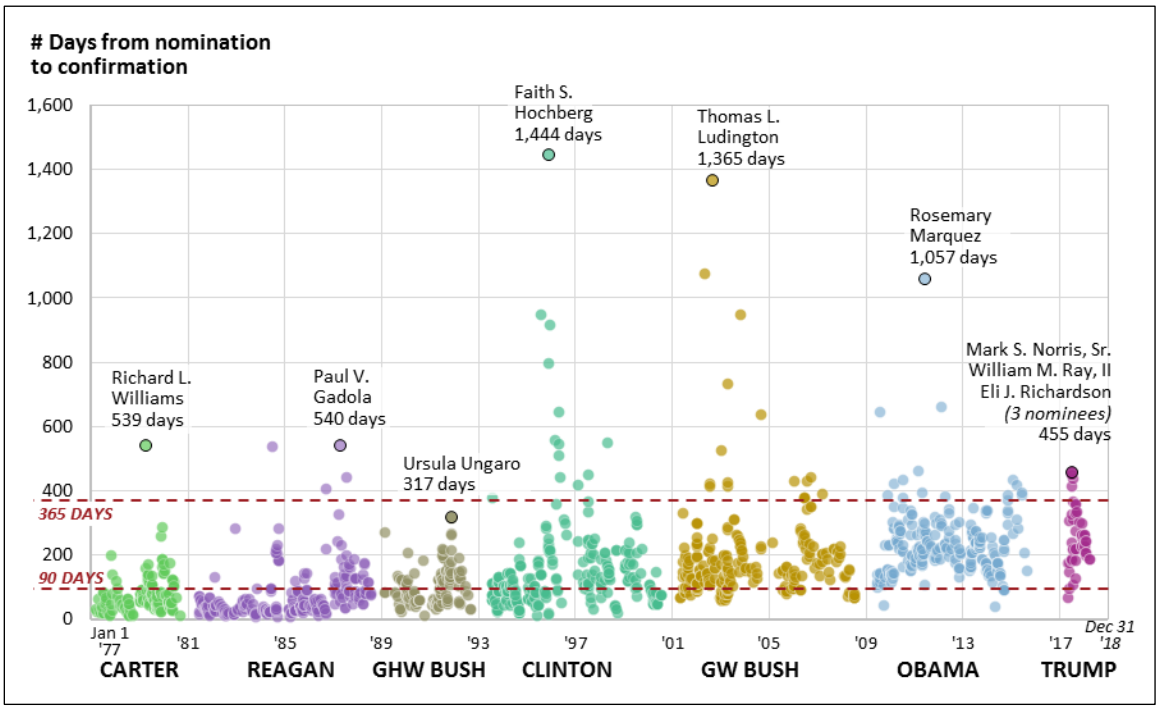
During the first two years of the Trump presidency, 11% of district court nominees waited at least 365 days from nomination to confirmation.

[30] As shown by the figure, the district court nominee who experienced the longest period of time from nomination to confirmation (across all seven presidencies) was Faith S. Hochberg, who waited 1,444 days, or nearly four years, to be confirmed after being nominated by President Clinton. The district court nominee who waited the second-longest period of time from nomination to confirmation was Thomas L. Ludington, who waited 1,365 days (or approximately 3.7 years) to be confirmed after being nominated by President G.W. Bush.

[31] One district court nominee during the Carter presidency waited 365 or more days from nomination to confirmation, while four nominees during the Reagan presidency waited this long.

Figure 2. U.S. District Court Nominees: Number of Days from Nomination to Confirmation

(1977-2018)



Source: Congressional Research Service.

Notes: This figure shows the number of days from nomination to confirmation for U.S. district court nominees whose nominations were approved by the Senate from 1977 through 2018. For each presidency, the district court nominee who waited the longest from nomination to confirmation is labeled in the figure.

90 or Fewer Days from Nomination to Confirmation

During the Carter and Reagan presidencies, 157 and 234 district court nominees, respectively, waited 90 or fewer days from nomination to confirmation. During the George H. W. Bush presidency, 72 district court nominees waited 90 or fewer days to confirmation. President Clinton had 129 district court nominees confirmed within 90 days (i.e., within approximately three months) of being nominated, while President George W. Bush had 41 such nominees. President Obama had five district court nominees, the fewest of any completed presidency, confirmed within three months of being nominated.

During the first two years of the Trump presidency, two district court nominees were confirmed within 90 or fewer days of being nominated.

Overall, 78% of President Carter's district court nominees were confirmed within 90 days of being nominated. During the Reagan presidency, 81% of district court nominees were confirmed within 90 days of nomination, while during the George H. W. Bush presidency 49% of district nominees were confirmed within this time frame.

During the Clinton and George W. Bush presidencies, the percentage of district court nominees approved by the Senate within 90 days declined further to 42% and 16%, respectively. During the Obama presidency, the percentage of nominees confirmed in 90 or fewer days was 2% (the lowest percentage of the completed presidencies).

During the first two years of the Trump presidency, 4% of district court nominees were confirmed within 90 days of being nominated.

By Congress

Table 8 reports the median number of days from nomination to confirmation for U.S. circuit and district court nominees whose nominations were approved by the Senate from the 95th Congress through the 115th Congress.

Table 8. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation, by Congress

(95th Congress-115th Congress)

		Circuit Court Nominees		District Court Nominees	
Congress	**Years**	Number Confirmed	Median Number of Days from Nomination to Confirmation	Number Confirmed	Median Number of Days from Nomination to Confirmation
95th	1977-78	12	29.0	48	37.5
96th	1979-80	44	66.5	154	65.0
97th	1981-82	19	28.0	68	30.0
98th	1983-84	14	46.0	61	26.0
99th	1985-86	33	45.0	95	41.0
100th	1987-88	17	118.0	66	98.0
101st	1989-90	22	79.0	48	72.5
102nd	1991-92	20	102.5	100	118.0
103rd	1993-94	19	99.0	107	78.0
104th	1995-96	11	167.0	62	99.0
105th	1997-98	20	196.5	79	139.0
106th	1999-2000	15	204.0	57	119.0
107th	2001-02	17	256.0	83	126.0
108th	2003-04	18	201.0	85	152.0
109th	2005-06	16	281.5	35	132.0
110th	2007-08	10	228.5	58	199.0
111th	2009-10	16	252.5	44	140.0
112th	2011-12	14	219.0	97	225.0
113th	2013-14	23	229.0	109	203.0
114th	2015-16	2	331.0	18	299.5
115th	2017-18	30	140.5	53	235.0

Source: Congressional Research Service.

Note: This table shows, for the 95th Congress through the 115th Congress, the number of U.S. circuit and district court nominees confirmed during each Congress and the median number of days from nomination to confirmation.

U.S. Circuit Court Nominees

For circuit court nominees, the median number of days from nomination to confirmation ranged from a low of 28.0 days during the 97th Congress (1981-1982) to a high of 331.0 days during the 114th Congress (2015-2016). The second-shortest median number of days from nomination to confirmation was 29.0 days during the 95th Congress (1977-1978), while the second-highest median number of days was 281.5 days during the 109th Congress (2005-2006).

The median number of days from nomination to confirmation for U.S. circuit court nominees stayed above 200 days from the 106th through 114th Congresses. In contrast, for the 115th Congress, the median number of days from nomination to confirmation (140.5 days, or 4.6 months) declined to its lowest point since the 103rd Congress.

If the average, rather than the median, is used to measure the length of time circuit court nominees waited from nomination to confirmation, the average number of days from nomination to confirmation ranged from a low of 32.6 days during the 95th Congress to a high of 562.9 days during the 109th Congress. Additionally, the average time from nomination to confirmation for U.S. circuit court nominees increases by more than 30 days, relative to the median, for the 106th Congress (to 373.9 days); 105th Congress (303.1 days); 108th Congress (287.2 days); 113th Congress (281.2 days); and 110th Congress (268.8 days).[32]

U.S. District Court Nominees

For U.S. district court nominees, the median number of days from nomination to confirmation ranged from a low of 26.0 days during the 98th Congress (1983-1984) to a high of 299.5 days during the 114th Congress (2015-2016). The second-shortest median was 30.0 days during the 97th Congress (1981-1982), while the second-longest median was 235.0 days during the 115th Congress (2017-2018).[33]

The median number of days from nomination to confirmation during the 115th Congress was the fourth consecutive Congress for which the median wait time from nomination to confirmation for district court nominees was greater than 200 days. The first Congress during which the median wait time for district court nominees exceeded 200 days was the 112th Congress (2011-2012).

Figure 3 displays the overall trends in the median number of days from nomination to confirmation for U.S. circuit and district court nominees who were confirmed from the 95th Congress through the 115th Congress (and also indicates the corresponding presidency for each Congress during this period).

For circuit court nominees, the five greatest increases in the number of median days from nomination to confirmation occurred during the 114th Congress (an increase of 102.0 days from the 113th Congress); the 109th Congress (an increase of 80.5 days from the 108th Congress); 100th Congress (an increase of 73.0 days from the 99th Congress); 104th Congress (an increase of 68.0

[32] As discussed above, the average number of days from nomination to confirmation is more greatly affected, relative to the median number of days from nomination to confirmation, by nominees during a presidency or Congress who experienced atypically long wait times from nomination to confirmation. The effect of these relatively long wait times is to increase the overall average time from nomination to confirmation that is reported for all of a President's nominees.

[33] The *average* number of days from nomination to confirmation for U.S. district court nominees during this period ranged from a low of 32.8 days during the 97th Congress to a high of 302.1 days during the 114th Congress. The second-lowest average wait time for district court nominees occurred during the 98th Congress (37.1 days), and the second-longest average wait time occurred during the 115th Congress (255.5 days).

days from the 103rd Congress); and the 107th Congress (an increase of 52.0 days from the 106th Congress).

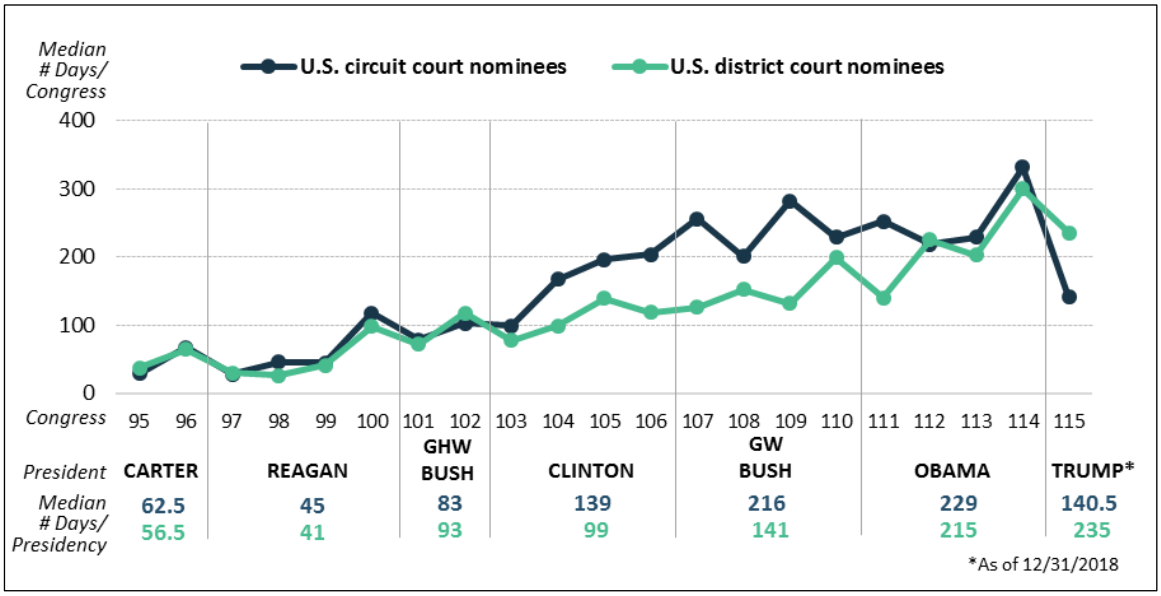
Most recently, from the 114th to 115th Congress, the median number of days from nomination to confirmation for U.S. circuit court nominees declined from 331.0 to 140.5 days.[34]

For district court nominees, the five greatest increases in the number of median days from nomination to confirmation occurred during the 114th Congress (an increase of 96.5 days from the 113th Congress); 112th Congress (an increase of 85.0 days from the 111th Congress); 110th Congress (an increase of 67.0 days from the 109th Congress); 100th Congress (an increase of 57.0 days from the 99th Congress); and the 102nd Congress (an increase of 45.5 days from the 101st Congress).

Most recently, from the 114th to 115th Congress, the median number of days from nomination to confirmation for U.S. district court nominees declined from 299.5 to 235.0 days.[35]

Figure 3. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Confirmation

(95th Congress-115th Congress)



Source: Congressional Research Service.

Note: This figure shows the median number of days from nomination to confirmation for U.S. circuit and district court nominees from the 95th Congress (Carter presidency) through the 115th Congress (Trump presidency).

[34] This was, for this period, the greatest decline in the median number of days from nomination to confirmation for circuit court nominees during two consecutive Congresses.

[35] This was, for this period, the greatest decline in the median number of days from nomination to confirmation for district court nominees during two consecutive Congresses.

Time from Nomination to Committee Hearing

The President customarily transmits a circuit or district court nomination to the Senate in the form of a written nomination message. Once received, the nomination is numbered by the Senate executive clerk, read on the floor, and then immediately referred to the Judiciary Committee.[36]

The Judiciary Committee's processing of the nomination typically consists of three phases—a prehearing phase, the holding of a hearing on the nomination, and voting on whether to report the nomination to the Senate.[37] During a hearing on the nomination, lower court nominees engage in a question-and-answer session with members of the Senate Judiciary Committee. The hearing typically is held for more than one judicial nominee at a time.

From 1977 through 2018, the median length of time from when an individual was first nominated to a circuit court judgeship to when he or she received a hearing by the Judiciary Committee was 63.0 days (or 2.1 months).[38] During this same period, the median length of time from when an individual was nominated to a district court judgeship to when he or she received a hearing was also 63.0 days.

Table 9. U.S. Circuit and District Court Nominees: Median Number of Days from Nomination to Committee Hearing

(1977-2018)

	Circuit Court Nominees	District Court Nominees
President	Median Number of Days from Nomination to Hearing	Median Number of Days from Nomination to Hearing
Carter	39.0	38.0
Reagan	23.0	22.0
G.H.W. Bush	65.5	65.0
Clinton	97.0	69.0
G.W. Bush	154.0	87.5
Obama	79.5	83.0
Trump[a]	*69.0*	*77.0*

Source: Congressional Research Service.

[36] The nomination is referred to the Judiciary Committee in conformance with two Senate rules—specifically Rule XXXI, which provides that nominations shall be referred to appropriate committees "unless otherwise ordered," and Rule XXV, paragraph 2(m), which outlines the jurisdiction of the Judiciary Committee. See CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki (under heading "Receipt and Referral").

Senate rules also permit the Senate to discharge the Judiciary Committee from a nomination by unanimous consent or by motion or resolution (although CRS has found no instances, at least going back to the early 1940s, of the Judiciary Committee being discharged of a circuit or district court nomination). For further discussion of this issue, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

[37] For additional discussion of these three phases, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

[38] These data include any nominee who received a hearing by the Judiciary Committee (including nominees whose nominations were not eventually approved by the Senate).

Note: This table shows, by presidency, the median number of days from nomination to hearing for U.S. circuit and district court nominees from 1977 through 2018.

a. The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Table 9** may not be directly comparable to the statistics provided for the other Presidents listed in the table.

As shown in **Table 9**, the median length of time from nomination to committee hearing for circuit and district court nominees has, however, varied across presidencies.[39] For individuals nominated during more recent presidencies, the length of time from nomination to committee hearing has been relatively longer than the median for all nominees from 1977 through 2018.

The median number of days from nomination to committee hearing for U.S. circuit court nominees ranged from a low of 23.0 days (during the Reagan presidency) to a high of 154.0 days (during the George W. Bush presidency).[40]

For the first two years of the Trump presidency, the median number of days from nomination to hearing for U.S. circuit court nominees was 69.0 days.

The median number of days from nomination to committee hearing for U.S. district court nominees ranged from a low of 22.0 days (during the Reagan presidency) to a high of 87.5 days (during the George W. Bush presidency).[41]

For the first two years of the Trump presidency, the median number of days from nomination to hearing for U.S. district court nominees was 77.0 days.

Time from Committee Report to Confirmation

After a nominee receives a hearing by the Judiciary Committee, she awaits a vote by the committee on whether her nomination will be reported to the Senate as a whole.[42] If the

[39] The median length of time has also varied by Congress. These data are not reported for this particular section of the report but are available to congressional staff upon request from the author.

[40] The data provided in **Table 9** include all nominees who received a hearing by the Judiciary Committee (including nominees whose nominations were not eventually approved by the Senate). For completed presidencies, the *average* number of days from nomination to committee hearing for U.S. circuit court nominees ranged from a low of 42.3 days during the Carter presidency to a high of 278.8 days during the G.W. Bush presidency. The second-shortest average wait time from nomination to hearing for circuit court nominees was during the Reagan presidency (43.8 days), while the second longest was during the Clinton presidency (155.1 days). During the first two years of the Trump presidency, the average wait time from nomination to hearing for circuit court nominees was 89.2 days.

[41] For completed presidencies, the *average* number of days from nomination to committee hearing for U.S. district court nominees ranged from a low of 44.3 days during the Reagan presidency to a high of 120.5 days during the G.W. Bush presidency. The second-shortest average wait time from nomination to hearing for district court nominees was during the Carter presidency (50.7 days), while the second longest was during the Clinton presidency (105.0 days). During the first two years of the Trump presidency, the average wait time from nomination to hearing for district court nominees was 88.7 days.

[42] Under Senate rules, a judicial nomination pending in the Judiciary Committee could also reach the Senate floor without being reported out of committee—if the Senate agreed to discharge the committee from consideration of the nomination. A CRS report explains that, under Senate Rule XVII, a Senator is allowed "to submit a motion or resolution to discharge a committee from consideration of a nomination. Such a motion or resolution would itself be subject to debate and potentially to a cloture process. The Senate does not, in current practice, employ a discharge procedure in relation to nominations, except in agreeing to unanimous consent to discharge a committee from consideration of a noncontroversial nomination." CRS Report R43331, *Majority Cloture for Nominations: Implications and the "Nuclear" Proceedings of November 21, 2013*, by Valerie Heitshusen (footnote to text under heading "Other Potential Effects on Presidential Nominations").

According to another CRS report, it is "fairly common for committees to be discharged from noncontroversial nominations by unanimous consent, with the support of the committee, as a means of simplifying the process." CRS

nomination is not put to the committee for a vote, or if the committee votes against reporting it (i.e., rejects the nomination),[43] the nomination will not move forward, ultimately failing to receive Senate confirmation.

The committee, in reporting a nomination to the Senate as a whole, has three options—to report a nomination favorably, unfavorably, or without recommendation. Almost always, when the committee votes on a nomination, it votes to report favorably. The committee, however, may vote (as it has done in the past, but only on rare occasions) to report unfavorably or without recommendation.[44] Such a vote advances the nomination for Senate consideration despite the lack of majority support for it in committee. After it is reported by the Judiciary Committee, a circuit or district court nomination is listed on the *Executive Calendar* and is eligible for floor consideration.[45]

The nominees who are included in this part of the analysis all had their nominations reported by the Judiciary Committee (i.e., their nominations advanced to the full Senate for consideration) and were confirmed by the Senate.

From 1977 through 2018, the median length of time from when an individual who was nominated to a circuit court judgeship had his nomination reported by the Judiciary Committee to when he was confirmed by the Senate was 9.0 days. During this same period, the median length of time from when a district court nominee had his nomination reported to when he was confirmed was 8.0 days.

There was, however, variation during this period across presidencies in how long circuit and district court nominees waited to be confirmed once their nominations were reported by the Judiciary Committee—with nominees during more recent presidencies waiting longer to be confirmed once their nominations were reported by the committee.[46]

As shown by **Table 10**, for completed presidencies, the median number of days from committee report to confirmation for U.S. circuit court nominees ranged from a low of 1.0 day (during the George H. W. Bush presidency) to a high of 98.0 days (during the Obama presidency).[47]

Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki (under heading "Reporting").

Nonetheless, in a database search of judicial nominations dating back to the mid-1940s, CRS research has identified no instances in which the Senate has discharged the Judiciary Committee of a judicial nomination.

[43] Usually, a judicial nominee rejected by the Judiciary Committee is not nominated again by the President. However, in some instances, a President has waited until a subsequent Congress to renominate, in the hope of a more favorable outcome in committee for the previously rejected nominee.

[44] The most recent example of the Judiciary Committee voting to report a judicial nomination other than favorably occurred on May 1, 2003. The committee that day approved, by a 10-9 roll call vote, a motion to report without recommendation the nomination of J. Leon Holmes to the U.S. District Court for the Eastern District of Arkansas. Subsequently, on July 6, 2004, the Senate confirmed the nomination by a 51-46 vote. For discussion of this and earlier instances of lower court nominations reported by the Judiciary Committee other than favorably, see CRS Report R40470, *U.S. Circuit and District Court Nominations: Senate Rejections and Committee Votes Other Than to Report Favorably, 1939-2013*, by Barry J. McMillion.

[45] For an in-depth discussion of the floor procedure related to judicial nominations, see CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki; and CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

[46] The median length of time has also varied by Congress. These data are not reported for this particular section of the report but are available to congressional staff upon request from the author.

[47] For completed presidencies, the *average* number of days from committee report to confirmation for U.S. circuit court nominees ranged from a low of 4.9 days during the Carter presidency to a high of 104.4 days during the Obama

For the first two years of the Trump presidency, the median number of days from committee report to confirmation was 26.0 days.

Table 10. U.S. Circuit and District Court Nominees: Median Number of Days from Committee Report to Confirmation

(1977-2018)

	Circuit Court Nominees	District Court Nominees
President	Median Number of Days from Committee Report to Confirmation	Median Number of Days from Committee Report to Confirmation
Carter	2.0	2.0
Reagan	4.0	4.0
G.H.W. Bush	1.0	1.0
Clinton	13.0	8.0
G.W. Bush	14.0	19.0
Obama	98.0	84.0
Trump[a]	*26.0*	*133.0*

Source: Congressional Research Service.

Notes: This table shows, by presidency, the median number of days from committee report to confirmation for U.S. circuit and district court nominees from 1977 through 2018.

a. The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Table 10** may not be directly comparable to the statistics provided for the other Presidents listed in the table.

For completed presidencies, the median number of days from committee report to confirmation for U.S. district court nominees ranged from a low of 1.0 day (during the George H. W. Bush presidency) to a high of 84.0 days (during the Obama presidency).[48]

For the first two years of the Trump presidency, the median number of days from committee report to confirmation for U.S. district court nominees was 133.0 days.

presidency. The second-shortest average wait time from committee report to confirmation for circuit court nominees was during the G.H.W. Bush presidency (7.8 days), while the second longest was during the Clinton presidency (39.0 days). During the first two years of the Trump presidency, the average wait time from report to confirmation for circuit court nominees was 33.2 days.

[48] For completed presidencies, the *average* number of days from nomination to committee hearing for U.S. district court nominees ranged from a low of 4.4 days during the Carter presidency to a high of 89.8 days during the Obama presidency. The second-shortest average wait time from nomination to hearing for circuit court nominees was during the G.H.W. Bush presidency (4.6 days), while the second longest was during the G.W. Bush presidency (30.1 days). During the first two years of the Trump presidency, the average wait time from committee report to confirmation for district court nominees was 147.3 days.

Ratings by the American Bar Association for Confirmed Nominees

Since 1953, every presidential Administration, except those of George W. Bush and Donald Trump, has sought prenomination evaluations of its candidates for district and circuit court judgeships by the American Bar Association (ABA).[49]

The committee that performs this evaluation, the ABA's Standing Committee on the Federal Judiciary, is made up of 15 lawyers with various professional experiences. The stated objective of the committee is to assist the White House in assessing whether prospective judicial nominees should be nominated.[50] It seeks to do so by providing what it describes as an "impartial peer-review evaluation" of each candidate's professional qualifications. This evaluation, according to the committee, focuses strictly on a candidate's "integrity, professional competence and judicial temperament" and does not take into account the candidate's "philosophy, political affiliation or ideology."[51] In evaluating professional competence, the committee assesses the prospective nominee's "intellectual capacity, judgment, writing and analytical abilities, knowledge of the law, and breadth of professional experience."[52]

Following the multistep evaluation process by the committee,[53] a nominee is given an official rating of "well qualified," "qualified," or "not qualified."[54] A rating is provided strictly on an advisory basis; it is solely in the President's discretion as to how much weight to place on a judicial candidate's ABA rating in deciding whether to nominate him or her.[55]

As shown by **Table 11**, there is some variation across presidencies in the percentage of confirmed U.S. circuit and district court nominees who received a particular rating by the ABA. For U.S. circuit court nominees for completed presidencies, the percentage who received a well qualified

[49] In 2009, the Obama Administration reinstituted the White House practice, discontinued by the previous Administration of George W. Bush, of informing the ABA committee of judicial candidates under consideration and seeking the committee's evaluation of these candidates before making nomination decisions. Bringing the ABA committee investigation back into the prenomination stage, one scholar noted, injected into that stage an "additional 30 to 45 days typically consumed" by an ABA committee investigation of a nominee. Russell Wheeler, "Judicial Nominations in the First 14 Months of the Obama and Bush Administrations," *Governance Studies at Brookings*, April 7, 2010, at https://www.brookings.edu/wp-content/uploads/2016/06/0407_judicial_nominations_wheeler.pdf.

[50] The ABA committee's explanation of its role and the standards and procedures it uses in rating candidates for lower federal court judgeships is presented in the booklet *American Bar Association Standing Committee on the Federal Judiciary; What It Is and How It Works*, at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.authcheckdam.pdf (hereinafter cited as *ABA Standing Committee; What It Is).*

[51] *ABA Standing Committee; What It Is*, p. 1.

[52] *ABA Standing Committee; What It Is*, p. 1.

[53] For an in-depth discussion of this process, see CRS Report R43762, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, by Barry J. McMillion.

[54] When the committee vote is not unanimous, it is noted which rating received a majority of the committee's votes and which rating received a minority, as well as whether the majority and minority votes were or were not "substantial." *ABA Standing Committee; What It Is*, p. 7. The majority vote is considered by the ABA to be the official rating of the nomination. The official rating is the rating that is used to calculate the data reported in **Table 11**. The data reported in the table do not indicate whether or not that rating was unanimous.

[55] If a President waits to submit a nomination until after he receives notice from the ABA about a potential nominee being rated as not qualified, he might decide not to nominate that individual. Because ABA ratings at this stage of the process are confidential, there is no public information as to how often this might occur during an administration that waits for the ABA to finish its evaluation of a potential nominee prior to submitting a nomination to the Senate.

rating ranged from a low of 56.6% during the Reagan presidency to a high of 80.0% during the Obama presidency.

During the first two years of the Trump presidency, 80.0% of confirmed circuit court nominees also received a well qualified rating.

None of the completed presidencies listed in the table had any confirmed circuit court nominees who were rated as not qualified by the ABA.

During the first two years of the Trump presidency, two circuit court nominees were rated as not qualified (comprising 6.7% of the circuit court nominees confirmed during this period).[56]

Table 11. U.S. Circuit and District Court Nominees: Official Ratings by the American Bar Association for Nominees Confirmed by the Senate

(1977-2018)

	Circuit Court Nominees			District Court Nominees		
President	Well Qualified	Qualified	Not Qualified	Well Qualified	Qualified	Not Qualified
Carter[a]	75.0%	25.0%	n/a	51.0%	47.5%	1.5%
Reagan	56.6%	43.4%	n/a	53.8%	46.2%	n/a
G.H.W. Bush	61.9%	38.1%	n/a	57.4%	42.6%	n/a
Clinton	75.4%	24.6%	n/a	58.7%	40.0%	1.3%
G.W. Bush	68.9%	31.1%	n/a	69.3%	29.1%	1.5%
Obama	80.0%	20.0%	n/a	58.6%	41.4%	n/a
Trump[b]	80.0%	13.3%	6.7%	62.3%	34.0%	3.8%

Source: Congressional Research Service.

Note: This table shows, for presidencies since 1977, the percentage of confirmed U.S. circuit and district court nominees who received an official rating of "well qualified," "qualified," and "not qualified" by the American Bar Association.

a. During the Carter and Reagan presidencies, the American Bar Association utilized a rating system that also allowed for a rating of "extremely well qualified." For the purposes of this report, any nominee who received such a rating during this period is included in the percentage of nominees who received a well qualified rating.

b. The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Table 11** may not be directly comparable to the statistics provided for the other Presidents listed in the table.

For confirmed U.S. district court nominees, the percentage who received a well qualified rating ranged from a low of 51.0% during the Carter presidency to a high of 69.3% during the George W. Bush presidency. During the first two years of the Trump presidency, 62.3% of confirmed district court nominees received a well qualified rating.

For completed presidencies during which at least one confirmed district court nominee was rated as not qualified, the percentage of nominees who received such a rating ranged from a high of

[56] For additional information, see Don Walton, "American Bar Association defends its negative rating of Nebraska judge nominee," *Lincoln Journal Star*, November 15, 2017, at https://journalstar.com/news/state-and-regional/federal-politics/american-bar-association-defends-its-negative-rating-of-nebraska-judge/article_cc58f4b1-24be-501f-a671-a93683184ae0.html; and Patrick L. Gregory, "ABA Rates Another Trump 8th Circuit Nominee 'Not Qualified,'" *Bloomberg BNA*, September 17, 2018, at https://www.bna.com/aba-rates-trump-n73014482574.

1.5% of all confirmed nominees during the Carter and George W. Bush presidencies to a low of 1.3% of such nominees during the Clinton presidency.[57] During the first two years of the Trump presidency, 3.8% of confirmed district court nominees received a rating of not qualified.[58]

Frequency of Roll Call Votes for Confirmed Nominees

The Senate may confirm nominations by unanimous consent, voice vote, or by recorded roll call vote. When the question of whether to confirm a nomination is put to the Senate, a roll call vote will be taken on the nomination if the Senate has ordered "the yeas and nays." The support of 11 Senators is necessary to order the roll call.[59]

Historically, the Senate confirmed most U.S. circuit and district court nominations by unanimous consent or by voice vote. As shown by **Figure 4**, however, using roll call votes to confirm nominees has become much more common during recent presidencies.

A relatively small percentage of circuit court nominees were confirmed by roll call vote during the Carter, Reagan, and George H. W. Bush presidencies. Specifically, 7.1%, 6.0%, and 2.4% of circuit court nominees were confirmed by roll call during each of these three presidencies, respectively.[60]

Additionally, only one district court nominee was confirmed by roll call vote during each of the Carter and Reagan presidencies, and no district court nominees were confirmed by roll call vote during George H. W. Bush's presidency.

Confirmation by roll call vote became more common during the Clinton presidency, with nearly one-quarter, 24.6%, of circuit court nominees and 10.5% of district court nominees receiving roll call votes at the time of Senate confirmation.[61]

It was not, however, until the George W. Bush presidency that a majority of lower court nominees were approved using roll call votes, with 80.3% of circuit court nominees and 54.0% of district court nominees confirmed in this way. This trend continued under President Obama, with 89.1% of circuit court nominees and 64.6% of district court nominees being confirmed by roll call vote.[62]

[57] Of the 202 district court nominees confirmed during the Carter presidency, 3 received a rating of not qualified. Of the 305 district court nominees confirmed during the Clinton presidency, 4 received such a rating. During the George W. Bush presidency, 4 of 261 confirmed district court nominees received a rating of not qualified.

[58] Of the 53 district court nominees confirmed during the first two years of the Trump presidency, 2 received a rating of not qualified.

[59] One Senator would need to request the roll call, and 10 would need to second the request. See CRS Report RS20199, *Ordering a Roll Call Vote in the Senate*, coordinated by Elizabeth Rybicki.

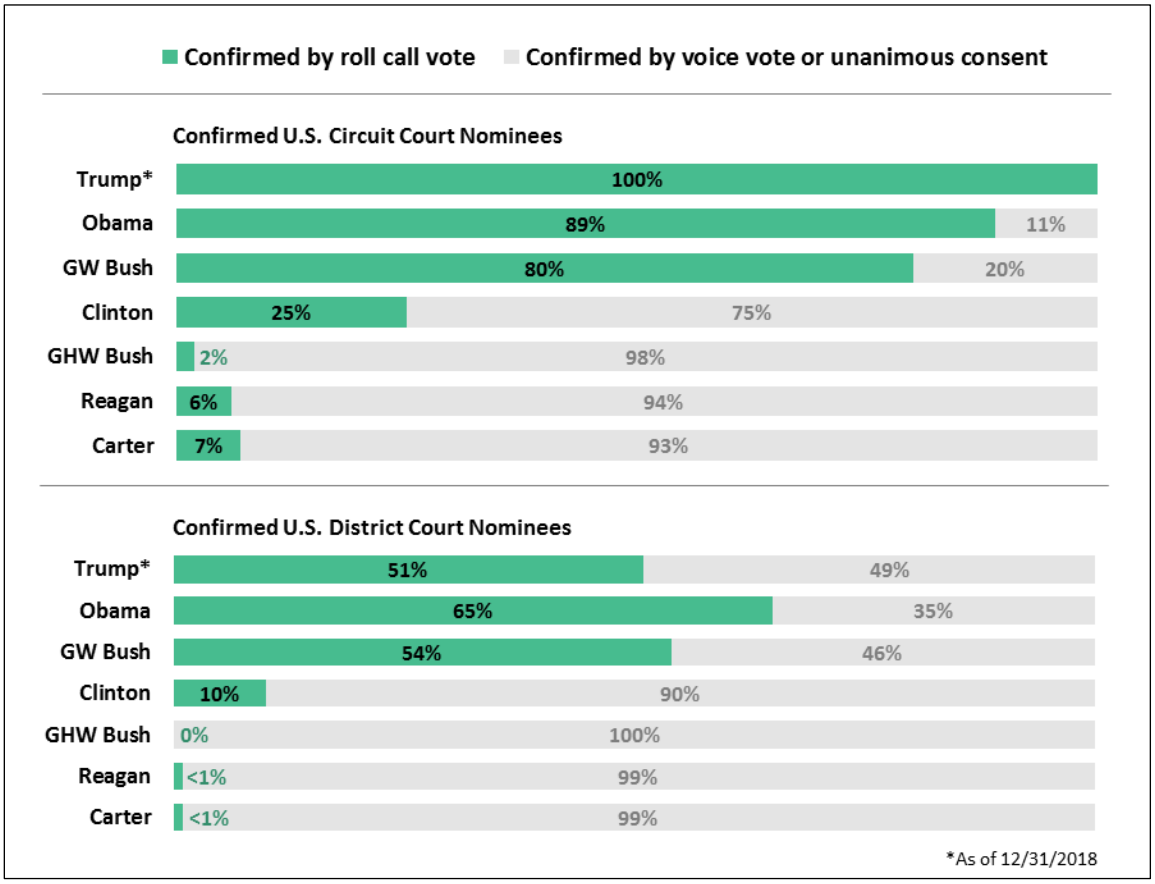
[60] During the Carter presidency, 4 of 56 U.S. circuit court nominees were confirmed by roll call vote; during the Reagan presidency, 5 of 83 were confirmed by roll call vote; and during the G.H.W. Bush presidency, 1 of 42 circuit court nominees were confirmed by roll call vote.

[61] During the Clinton presidency, 16 of 65 U.S. circuit court nominees were confirmed by roll call vote; and 32 of 305 district court nominees were confirmed by roll call vote.

[62] During the G.W. Bush presidency, 49 of 61 circuit court nominees were confirmed by roll call vote, while 141 of 261 district court nominees were confirmed by roll call vote. During the Obama presidency, 49 of 55 circuit court nominees were confirmed by roll call vote, while 173 of 268 district court nominees were confirmed by roll call vote.

During the first two years of the Trump presidency, all U.S. circuit court nominees were confirmed using roll call votes, representing an increase from recent years in the frequency of using roll call votes to confirm circuit court nominees. In contrast, 50.9% of district court nominees were confirmed by roll call vote, representing a decrease from recent years in the frequency of using roll call votes to confirm district court nominees.[63]

Figure 4. U.S. Circuit and District Court Nominees: Percentage Confirmed by Roll Call Vote



Source: Congressional Research Service.

Notes: These figures show the percentage of U.S. circuit and district court nominees confirmed by roll call vote from the Carter presidency through the first two years of the Trump presidency.

The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Figure 4** may not be directly comparable to the statistics provided for the other Presidents listed in the figure.

Number of Nay Votes Received

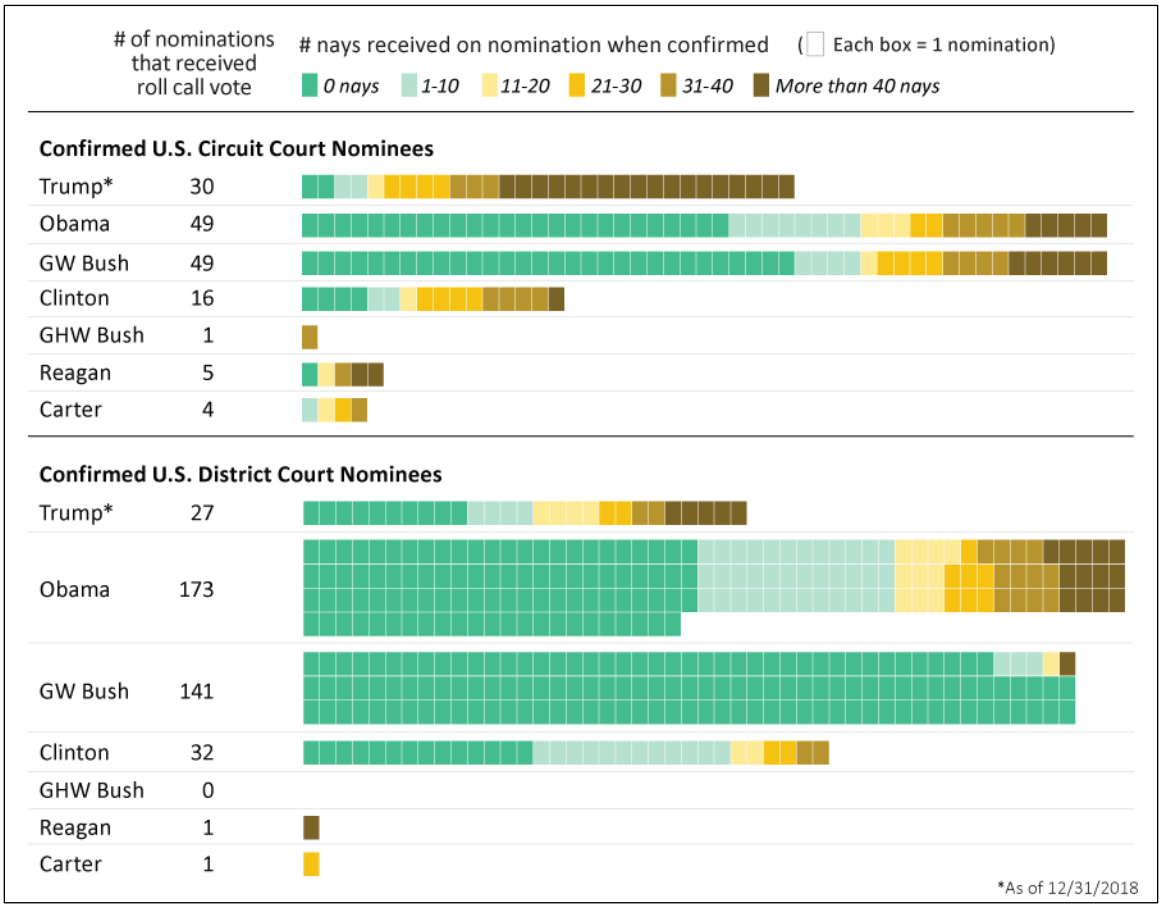
The increased frequency with which roll call votes have been used to confirm U.S. circuit and district court nominations has not always been correlated with Senators using roll call votes to express opposition to a nominee by voting against his or her nomination. As shown by **Figure 5**,

[63] Specifically, all 30 of the U.S. circuit court nominees confirmed during the first two years of the Trump presidency were approved by roll call vote. For district court nominees, 27 of 53 were confirmed by roll call vote.

there is notable variation in the number of nay votes received by circuit and district court nominations when they have been confirmed by roll call vote.

The figure shows the number of nominations that received zero nay votes at the time of confirmation. For nominations that received at least one nay vote, the roll call data are presented using five ranges to reflect the number of nay votes received by a President's nominees: (1) 1 to 10 nay votes; (2) 11 to 20 nay votes; (3) 21 to 30 nay votes; (4) 31 to 40 nay votes; and (5) more than 40 nay votes.

Figure 5. U.S. Circuit and District Court Nominees: Number of Nay Votes Received at Time of Confirmation



Source: Congressional Research Service.

Notes: These figures show the number of nominations that received zero nay votes at the time of confirmation. For nominations that received at least one nay vote, the roll call data are presented using five ranges to reflect the number of nay votes received by a President's nominees: (1) 1 to 10 nay votes; (2) 11 to 20 nay votes; (3) 21 to 30 nay votes; (4) 31 to 40 nay votes; and (5) more than 40 nay votes.

The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Figure 5** may not be directly comparable to the statistics provided for the other Presidents listed in the figure.

During the Clinton presidency, 12 (75.0%) of 16 circuit court nominees who were confirmed by roll call vote received at least one nay vote (with 9, or 56.2%, receiving more than 20 nay votes). Of the 32 district court nominees who were confirmed by roll call vote, 18 (56.2%) received at least one nay vote.

In contrast to the Clinton presidency, a majority of the circuit and district court nominees approved by roll call vote during the George W. Bush and Obama presidencies were confirmed after having received zero nay votes. During the Bush presidency, 30 (61.2%) of 49 circuit court nominees confirmed by roll call votes received zero nay votes. For the 141 district court nominees confirmed by roll call vote, 136 (96.4%) received zero nay votes.

During the Obama presidency, 26 (53.1%) of 49 circuit court nominees confirmed by roll call vote received zero nay votes. For the 173 district court nominees confirmed by roll call vote, 95 (54.9%) received zero nay votes.

During the first two years of the Trump presidency, 18 (60.0%) of 30 circuit court nominees approved by roll call vote were confirmed with more than 40 nay votes. In contrast, 2 (6.7%) were confirmed with zero nay votes. For district court nominees, 17 (63.0%) of 27 confirmed by roll call vote received at least one nay vote (while 10, or 37.0%, received zero nay votes). Of the 17 who received at least one nay vote, a plurality (5, or 29.4%) received more than 40 nay votes.

Demographic Characteristics of Confirmed Nominees

This section provides data related to the gender and race of U.S. circuit and district court nominees confirmed by the Senate during each presidency since the Carter Administration. These particular demographic characteristics of judicial nominees are of ongoing interest to Congress. Such interest is demonstrated especially at the time circuit and district court nominations are considered by the Senate.[64] For example, floor statements by Senators in support of circuit or district court nominees frequently emphasize the particular demographic characteristics of nominees who would enhance the diversity of the federal judiciary.[65]

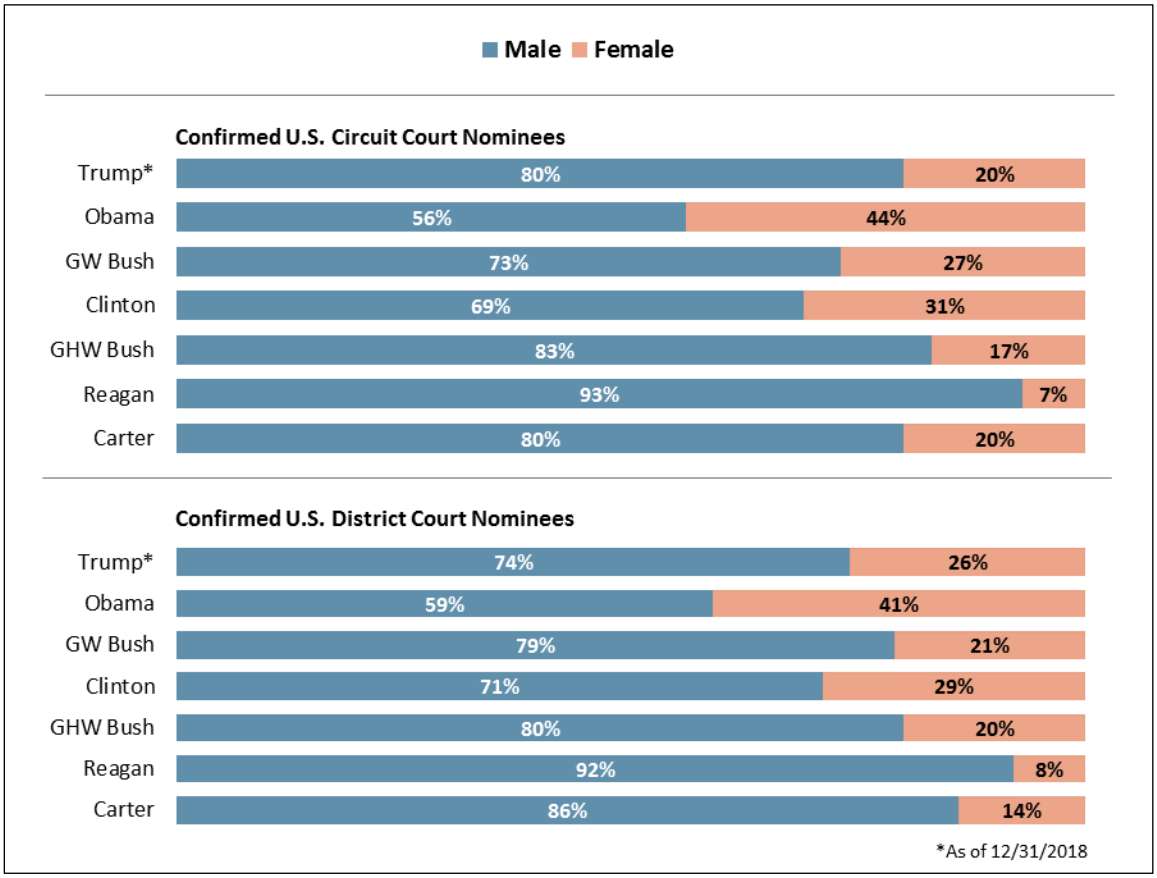
[64] Although Members of the U.S. House of Representatives do not have a formal constitutional role in the confirmation of federal judges, the demographic characteristics of judicial nominees are also of interest to Members of the House. See, for example, Rep. Mike Honda, "Asian Pacific American Heritage Month," Remarks in the House, *Congressional Record*, daily edition, May 19, 2010, p. H3652 (stating that the President has "demonstrated commitment to judicial diversity through the nomination of high caliber Asian American and other minority jurists at all levels of the Federal bench"). See also Rep. Charlie Gonzalez, "Nomination of Miguel Estrada," Remarks in the House, *Congressional Record*, daily edition, February 13, 2003, p. H685 (stating that the Congressional Hispanic Caucus "will actively work to identify and recommend qualified Hispanic candidates to fill Federal court vacancies"). Additionally, in 2014, the Congressional Black Caucus released a letter to urge President Obama to appoint a greater number of African American judges, particularly to certain judicial districts (e.g., the three judicial districts located in Alabama). For the text of the letter, see https://www.documentcloud.org/documents/1009668-cbc-judges-letter-to-the-president.html.

[65] For recent examples, see Sen. Lisa Murkowski, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, November 15, 2011, p. S7426; Sen. Ben Cardin, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, April 4, 2011, p.S2079; Sen. Roger Wicker, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, November 4, 2013, p.S7791; Sen. Pat Toomey, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, January 11, 2016; Sen. Amy Klobuchar, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, January 19, 2016, p. S84; and Sen. Cory Booker, "Executive Session," Remarks in the Senate, *Congressional Record*, daily edition, January 27, 2016, p. S242.

Gender

As shown by **Figure 6**, for completed presidencies,[66] the percentage of confirmed U.S. circuit court nominees who were women ranged from a low of 7.2% during the Reagan presidency to a high of 43.6% during the Obama presidency.[67]

Figure 6. U.S. Circuit and District Court Nominees: Percentage of Confirmed Nominees by Gender and Presidency



Source: Congressional Research Service.

[66] Note that the Carter presidency is the first presidency during which women comprised a notable number and percentage of confirmed circuit and district court nominees. During the Carter presidency, 12 of 59 confirmed circuit court nominees and 29 of 203 confirmed district court nominees were women. Prior to the Carter presidency, there had been two women appointed as circuit court judges and six appointed as district court judges. The first female U.S. circuit court judge, Florence E. Allen, was appointed to the Sixth Circuit by President Franklin D. Roosevelt in 1934. The first female U.S. district court judge, Burnita S. Matthews, was appointed to the U.S. District Court for the District of Columbia by President Truman in 1949.

[67] Of President Reagan's confirmed circuit court nominees, 6 of 83 were women. Of President Obama's confirmed circuit court nominees, 24 of 55 were women.

Note: This figure shows, for select presidencies, the percentage of confirmed U.S. circuit and district court nominees by gender.

The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Figure 6** may not be directly comparable to the statistics provided for the other Presidents listed in the figure.

For district court nominees, the percentage of confirmed nominees who were women ranged from a low of 8.3% during the Reagan presidency to a high of 41.0% during the Obama presidency.

During the first two years of the Trump presidency, 20.0% of confirmed U.S. circuit court nominees were women, while 26.4% of confirmed district court nominees were women.[68]

Race

Figure 7 shows the percentage of each President's confirmed U.S. circuit and district court nominees who were African American, Asian American, Hispanic, and white.[69]

Confirmed African American Nominees

For completed presidencies, the percentage of confirmed U.S. circuit court nominees who were African American ranged from a low of 1.2% during the Reagan presidency to a high of 16.4% during the Obama presidency.[70]

During the first two years of the Trump presidency, no confirmed circuit court nominees were African American.

For completed presidencies, the percentage of confirmed U.S. district court nominees who were African American ranged from a low of 2.1% during the Reagan presidency to a high of 18.7% during the Obama presidency.[71]

During the first two years of the Trump presidency, 1.9% of confirmed district court nominees were African American.[72]

[68] Of President Reagan's confirmed district court nominees, 24 of 290 were women. Of President Obama's confirmed district court nominees, 110 of 268 were women.

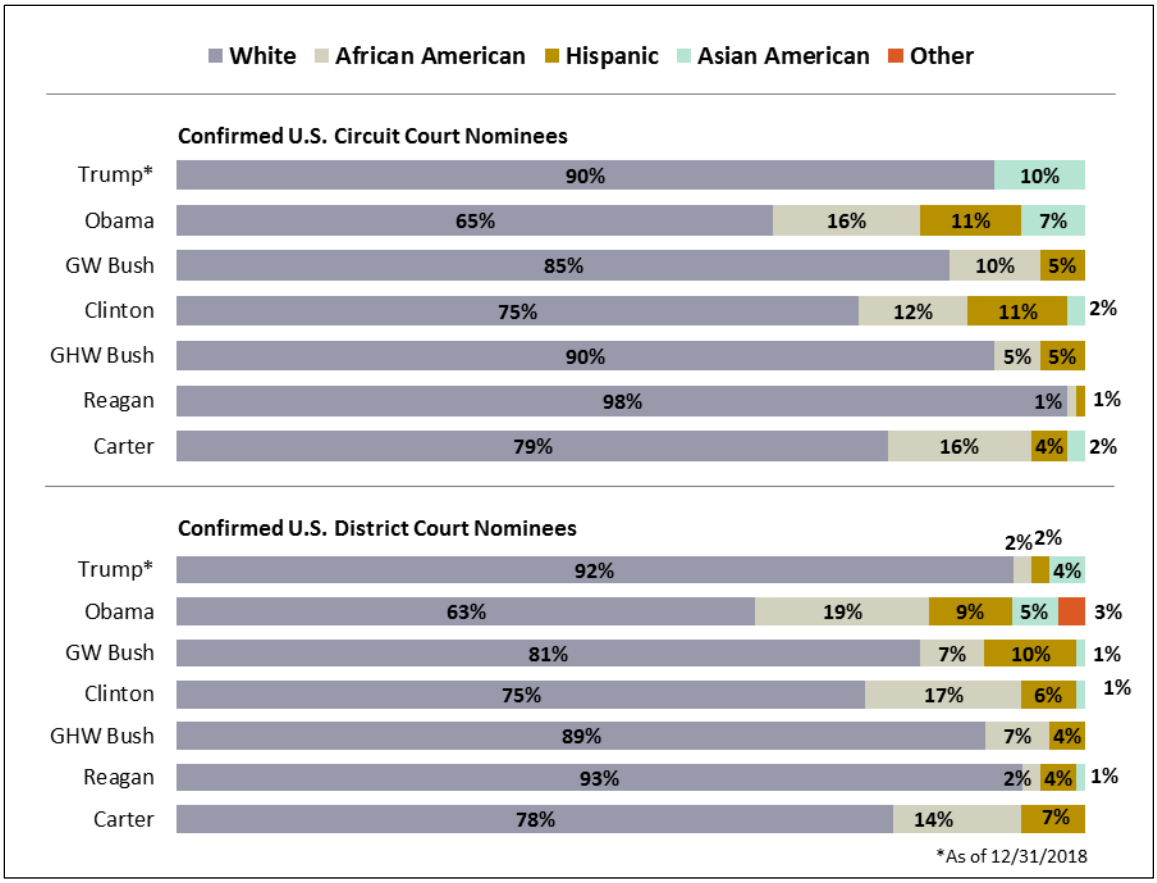
[69] The racial data for confirmed judicial nominees are compiled from the *Biographical Directory of Article III Judges*, a resource provided by the Federal Judicial Center and Administrative Office of U.S. Courts. The racial categories used in this report "generally reflect a social definition of race recognized in this country and [are] not an attempt" by CRS "to define race biologically, anthropologically, or genetically." See https://www.census.gov/topics/population/race.html. For the purposes of this report, the Hispanic category is treated as a nonwhite category. Note, though, that individuals who identify as Hispanic or Latino may be of any race. Ibid.

[70] Of President Reagan's 83 confirmed circuit court nominees, 1 was African American. Of President Obama's 55 confirmed circuit court nominees, 9 were African American. The first African American U.S. circuit court judge, Judge William H. Hastie, was appointed to the Third Circuit by President Truman in 1949. Prior to 1977, three other African Americans were appointed as U.S. circuit court judgeships. The first female African American U.S. circuit court judge, Judge Amalya L. Kearse, was appointed to the Second Circuit by President Carter in 1979.

[71] Of President Reagan's 290 confirmed district court nominees, 6 were African American. Of President Obama's 268 confirmed district court nominees, 50 were African American. The first African American U.S. district court judge, James B. Parsons, was appointed to the Northern District of Illinois by President Kennedy in 1961. The first female African American district court judge, Constance B. Motley, was appointed to the Southern District of New York by President Lyndon B. Johnson in 1966.

[72] Of the 53 district court nominees confirmed during the first two years of the Trump presidency, 1 was African American.

Figure 7. U.S. Circuit and District Court Nominees: Percentage of Confirmed Nominees by Race and Presidency



Source: Congressional Research Service.

Note: This figures shows, for select presidencies, the percentage of confirmed U.S. circuit and district court nominees by race. Any group that comprises less than 1% of a President's appointees is not represented in the figure.

The statistics presented for the Trump presidency are for the first two years of his presidency and not for his entire term in office. Consequently, the statistics presented for the Trump presidency in **Figure 7** may not be directly comparable to the statistics provided for the other Presidents listed in the figure.

Confirmed Asian American Nominees

For completed presidencies, there were no Asian American circuit court judges appointed during the Reagan, George H. W. Bush, or George W. Bush presidencies. The greatest percentage was appointed during the Obama presidency (7.3%).[73]

During the first two years of the Trump presidency, 10.0% of confirmed circuit court nominees were Asian American.

[73] Of President Obama's 55 confirmed circuit court nominees, 4 were Asian American. The first Asian American U.S. circuit court judge, Herbert Young Cho Choy, was appointed to the Ninth Circuit by President Nixon in 1971. Prior to 1977, he remained the sole Asian American appointed to a circuit court judgeship. The first female Asian American U.S. circuit court judge, Judge Jacqueline Hong-Ngoc Nguyen, was appointed to the Ninth Circuit by President Obama in 2012.

For past presidencies, there were no Asian American district court judges appointed during the George H. W. Bush presidency. The greatest percentage was appointed during the Obama presidency (5.2%).[74]

During the first two years of the Trump presidency, 3.8% of confirmed district court nominees were Asian American.[75]

Confirmed Hispanic Nominees

For completed presidencies, the percentage of confirmed U.S. circuit court nominees who were Hispanic ranged from a low of 1.2% during the Reagan presidency to a high of 10.9% during the Obama presidency.[76]

During the first two years of the Trump presidency, no confirmed circuit court nominees were Hispanic.

For completed presidencies, the percentage of confirmed U.S. district court nominees who were Hispanic ranged from a low of 4.1% during the George H. W. Bush presidency to a high of 10.3% during the George W. Bush presidency.[77]

During the first two years of the Trump presidency, 1.9% of confirmed district court nominees were Hispanic.[78]

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[74] Of President Obama's 268 confirmed district court nominees, 14 were Asian American. The first Asian American U.S. district court judge, Dick Yin Wong, was appointed to the District of Hawaii by President Ford in 1975. The first female Asian American district court judge, Susan Oki Mollway, was appointed to the District of Hawaii by President Clinton in 1998.

[75] Of the 53 district court nominees confirmed during the first two years of the Trump presidency, 2 were Asian American.

[76] Of President Reagan's 83 confirmed circuit court nominees, 1 was Hispanic. Of President Obama's 55 confirmed circuit court nominees, 6 were Hispanic. The first Hispanic U.S. circuit court judge, Reynaldo G. Garza, was appointed to the Fifth Circuit by President Carter in 1979. The first female Hispanic U.S. circuit court judge, Judge Kim McLane Wardlaw, was appointed to the Ninth Circuit by President Clinton in 1998.

[77] Of President George H.W. Bush's 148 confirmed district court nominees, 6 were Hispanic. Of President George W. Bush's 261 confirmed district court nominees, 27 were Hispanic. The first Hispanic U.S. district court judge, Reynaldo Guerra Garza, was appointed to the Southern District of Texas by President Kennedy in 1961. The first female Hispanic district court judge, Carmen Consuelo Cerezo, was appointed to the District of Puerto Rico by President Carter in 1980.

[78] Of the 53 district court nominees confirmed during the first two years of the Trump presidency, 1 was Hispanic.

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